



International Employment Lawyer

# Guide to Restructuring a Cross-Border Workforce

**Bulgaria** 

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# Bulgaria

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## A.Reduction in Workforce

**1. Is there a concept of redundancy - based on a shortage of work or other economic reasons - as a justified reason to dismiss employees in your jurisdiction? If so, how is it defined?**

Economic (redundancy) grounds for termination of employment include:

- Partial closing of the employer's enterprise: dismissal is a result of the termination (but not transfer or distribution to other departments) of the activities of a well-defined and separate structural unit of the enterprise.
- Elimination of job positions: a certain number of the total number of positions are eliminated. Unlike the partial closing, however, the economic activity continues but is performed by a fewer number of employees.
- Decrease of workload: whatever the reason for the decreased workload, the employer is entitled to reduce the number of employees in certain organisational units or in the whole company pro rata.
- Suspension of work (idle time) for more than 15 business days also gives grounds to the employer to terminate employees who are affected by the idle time.

**2. In brief, what is the required process for making someone redundant?**

The process involves the following steps:

- Step 1: Corporate resolution. The competent corporate body of the employing entity should pass a resolution acknowledging the existence of the respective termination ground (eg, closing the specific unit, eliminating certain positions from the schedule of positions).
- Step 2: Evaluating the need to select among employees and conducting a selection process (except for termination resulting from idle time). If the position to be eliminated is identical or similar to other existing positions in the employer's enterprise, the employer should conduct a mandatory selection process among the employees occupying such positions based on their: (i) qualification; and (ii) productivity (other criteria are not allowed).
- Step 3: Evaluating prospective protection entitlement (except for termination resulting from idle time). Irrespective of any prior information on the matter, an employer must – at the time of and before serving the termination notice – examine the employee's entitlement to protection against dismissal.
- Step 4: Serving written termination notifications to the affected employees.
- Step 5: Issuing documents certifying the fact of termination and other facts of employment (eg, termination order, certified labour book).
- Step 6: Reporting of the fact of termination. Please see question 16.

**3. Does this process change where there is a "collective redundancy"? If so, what is the employee number threshold that triggers a collective redundancy?**

If the redundancy is classified as collective, it requires additional procedural steps (which are of administrative nature and their non-compliance may be financially sanctioned but may not serve as grounds for reversal of the individual dismissals). Collective redundancies are defined as the dismissal by the employer, for reasons not related to the individual employees concerned, over a period of 30 days of:

- at least 10 employees in enterprises that employed between 21 and 99 employees during the month preceding the dismissals;
- at least 10% of employees in enterprises that employed between 100 and 299 employees during the month preceding the dismissals; and
- at least 30 employees in enterprises that employed 300 or more employees during the month preceding the dismissals.

**4. Do employers need to consult with unions or employee representatives at any stage of the redundancy process? If there is a requirement to consult, does agreement need to be reached with the union/employee representatives at the end of the consultation?**

Employers are obliged to inform and consult with their employees on various matters, such as (but not limited to) anticipatory measures, in particular where there is a threat to employment (eg, dismissals). If the measures envisaged would lead to collective dismissal, the collective notification and consultation with employees must follow specific rules. Consultations must be carried out with any trade union that has members among the employees concerned and with employee representatives, where these have been elected. There is no requirement for reaching an agreement.

In addition, notifications on the anticipated collective redundancy must be submitted to the Bulgarian Employment Agency. See question 6.

**5. If agreement is not reached, can the restructure be delayed or prevented? If so, by whom?**

No.

**6. What does any required consultation process involve (ie, when should it commence, how long should it last, what needs to be covered)? If an employer fails to comply with its consultation obligations, what remedies are available?**

Employers are obliged to commence consultations with the employees' representatives and trade unions represented at the enterprise (together, the Employees) no later than 45 days before the individual dismissals commence.

Prior to such consultations, the employer should provide the Employees with written information with minimum statutory contents. Within three business days of delivering the said information to the Employees, the employer must send a copy to the Bulgarian Employment Agency.

After the end of consultations (but not later than 30 days before the first individual dismissal date), the employer should again notify the Employment Agency in writing. The notification should comprise the same information as before, and should in addition contain facts about the consultations held with the Employees. The employer should serve a copy of this

notification to the Employees within three business days of its filing to the Employment Agency.

If an employer fails to observe its statutory information, consultation, and notification obligations over collective redundancies, it may be subject to financial penalties (but the individual dismissals performed in line with the process described in question 2 will not be invalidated).

**7. Do employers need to present an economic business rationale as part of the consultation with unions/employee representatives? If so, can this be challenged and how would such a challenge normally be made?**

One of the mandatory contents of the written information to be provided to the Employees is a description of the reasons for the redundancies. The rationale cannot be challenged by the Employees, but they can submit a statement regarding it to the Employment Agency. However, this cannot obstruct the redundancy.

**8. Is there a requirement or is it best practice to consult employees individually (whether or not the employer is also legally required to collectively consult employees)?**

There is no requirement to consult employees individually. If the employer chooses to individually consult employees, effort must be made to not discriminate in any way.

**9. Are there rules on the selection of individual employees for redundancy?**

Yes. Please see question 2.

**10. Are there any specific categories of employees who an employer is prohibited from making redundant?**

Employees at various stages of pregnancy and childbirth leave, pregnant female employees, and female employees being in an advanced stage of in vitro treatment cannot be made redundant as a reorganisation measure (unless the employer's entire enterprise is closed).

**11. Are there categories of employees with enhanced protection (eg, union officials, employees on sick leave or maternity/parental leave, etc)?**

Other categories of employees may only be terminated on economic grounds subject to the prior approval of the Bulgarian Labour Inspectorate (requiring in some cases the prior opinion of a special labour expert medical commission):

- female employees who are mothers to children up to three years of age;
- partially disabled employees;
- employees suffering from diseases specified by the Minister of Healthcare;
- employees who, at the time of delivery of the termination instrument, are on permitted leave;
- employees who have been elected to act as employees' representatives within the term of their mandate;
- employees who are members of a special negotiation body, an European Employee Council, or a representative body of the European commercial company/cooperation, for the term of appointment; and
- employees who are appointed as health and safety representatives, within the term of appointment.

**12. What payments are employees entitled to when made redundant? Do these payments need to be made within a specified period? Are there any other requirements, such as giving contractual notice, payments into a central fund, etc.**

In all events of termination of employment (including redundancies) employees will be eligible to receive the following payments:

- compensation for unused vacation; and
- compensation payable to employees having acquired the right to retire on old-age pension.

Additionally, in case of unilateral termination on redundancy grounds, the employees might become entitled to:

- payment in lieu of notice (PILON) – if the required notice period is not observed; and
- specific unemployment compensation (capped at one month's salary) – if the employee remains unemployed in the next month following the termination.

The above compensations must be paid no later than the last day of the month following the one in which employment is terminated, unless otherwise agreed upon in a collective bargaining agreement.

**13. If employees are entitled to redundancy/severance payments, are there eligibility criteria and how is the payment calculated? If this is formula based, please set out the formula.**

- Compensation for unused vacation is due if at the termination date the employee has outstanding vacation entitlement. The amount of this compensation is the gross monthly remuneration received by the respective employee for the last month preceding the one in which the employment is terminated, and during which the employee has worked for at least ten days. This basis is used for calculating the average daily wage, which is then multiplied by the numbers of days of unused leave.
- When termination of employment occurs after the employee has acquired the right to retire on old-age pension, compensation is due in the following amounts: (i) six months' gross remuneration, if the employee has ten years of service with the same employer or in the same group of undertakings during the previous 20 years; or (ii) two months' gross remuneration, otherwise.
- PILON: the compensation equals the gross remuneration due for the part of the notification period of which the notice falls short (if any).
- The specific unemployment compensation is equal to the gross wage payable for the period during which the employees have been left unemployed following the termination date, but up to a maximum of one month. If within such a term the employees have been employed but for a salary lower than the one to which they were entitled at the position from which they were released, the employees are entitled to a compensation for the margin lost by them due to the dismissal.

**14. Do employers need to notify local/regional/national government and/or regulators before making redundancies? If so, by when and what information needs to be provided?**

Yes. Please see questions 4 and 6.

**15. Is there any obligation on employers to consider alternatives to redundancy, including suitable alternative employment?**

There are no such obligations, but the employer must engage in discussions in this regard as part of the consultation process.

**16. Do employers need to notify local/regional/national government and/or regulators after making redundancies, eg, immigration department, labour department, pension authority, inland revenue, social security department? If so, by when and what information needs to be provided?**

Employers must inform the National Revenue Agency (NRA) about the termination of employment by filing a standard notification form for each employee within seven calendar days from the termination date.

If the employee working under a fixed-term agreement is not a citizen of the EU, EEA, or Switzerland, and employment is terminated before the expiry of the fixed term, the employer must notify the Employment Agency and the Migration Directorate within three days from the termination date.

**17. If an employee is not satisfied with the decision to make them redundant, do they have any potential claims against the employer? If so, what are they and in what forum should they be brought, eg, tribunal, arbitration, court? Could a union or employee representative bring a claim on behalf of an employee/employees and if so, what claim/s and where should they be brought?**

The employee can challenge the lawfulness of the dismissal before the employer or the competent court and claim:

- declaration of the unlawfulness of the dismissal and its annulment;
- reinstatement;
- compensation for the period of unemployment as a result of the dismissal; and
- correction of the grounds for dismissal entered in the labour book or other documents.

Bulgarian law does not allow arbitration in disputes related to employment. Such actions must be personally brought by the employee before the competent court.

**18. Is it common to use settlement agreements when making employees redundant?**

This is an optional but recommendable step. Mutual consent termination is procedurally simpler and mitigates the risk of unlawful termination claims.

**19. In your experience, how long does it normally take to complete an individual or collective redundancy process?**

Based on the statutory timeline applicable to collective and individual dismissal processes (also taking into account the time for internal organisation of the process by the employer, selection process, requesting approvals for protected classes, etc), the process may take around three to four months.

**20. Are there any limitations on operating a business for a period following a redundancy, like a prohibition on hiring or priority for re-hire being given to previous employees?**

When terminating employment on economic grounds, the employer cannot create new positions with the same or similar duties shortly after – this would create a risk for the dismissals to be deemed unlawful and will entitle the dismissed

employees to be reinstated. There is no exact rule on how long the employer must wait before rehiring for such positions, but a reasonably long period in which the economic conditions may change should be applicable (eg, four to six months, to be examined on a case-by-case basis).

## Restructuring/Re-organisation of the business

**21. Is employee consultation or consent required for major transactions (such as business transfer, mergers, acquisitions, disposals or joint ventures)?**

Employees are entitled to receive prompt, accurate, and comprehensible information about the employer's economic and financial situation and matters relevant to their employment. Employees are also entitled to information and consultation rights upon change of employer due to:

- merger of undertakings;
- division of the activities between two or more undertakings;
- the transfer of a distinct part of one undertaking;
- a change in the legal form of the employing entity;
- a change of ownership of the undertaking or of a division thereof; and
- assignment or transfer of business from one undertaking to another, including the transfer of tangible assets.

**22. What are the remedies that are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?**

The corporate restructuring is not conditional on complying with the consultation and information requirements and cannot be blocked by the employees. The employer may face financial penalties for non-compliance.

**23. Is there any statutory protection of employees on a business transfer? Are employees automatically transferred with the business? Are employees protected against dismissal (before or after the transfer of employment)?**

In all cases of change of employer (see question 21), the employment relationship transfers automatically. The general rules on termination of employment are applicable before and after the transfer of employment.

**24. What is the procedure for a transfer of employment (upon a business transfer or within group companies)?**

Employment is transferred by virtue of law without following a specific procedure. However, the specific information and consultation rights of the employees must be observed. Employers are also under an obligation to inform the NRA within ten calendar days from the employee transfer date.

**25. Are there any statutory rules on harmonising the transferring employees' terms of employment with the existing employees' terms of employment?**

There is no specific requirement for employers to harmonise the transferring employees' terms of employment with the existing employees' terms, but such process should take place for anti-discrimination reasons. Employers are prohibited from discriminating against employees, directly or indirectly, in relation to employment on a vast number of grounds.

## Changing Terms and Conditions

**26. Can an employer reduce the hours, pay and/or benefits of an employee?**

The possibilities for employers to unilaterally amend employment terms under Bulgarian law are very limited. Hours may be varied (by introducing part-time work for full-time employees), only upon decrease of workload, for a maximum of three months per year.

Other than the very few statutory exceptions that may lead to reduced pay (eg, forced part-time work), unilateral decrease of pay or contractually agreed benefits is not allowed.

**27. Can an employer rely on an express contractual provision to vary an employment term?**

Contractual provisions allowing the employer to unilaterally amend employment are invalid.

**28. Can an employment term be varied by implied conduct?**

Generally, no. There is such possibility only regarding fixed-term employment agreements – they may be transformed in indefinite agreements, if the employee continues to work after expiry of the agreed term for five business days or more without a written objection from the employer and provided the position is vacant. This rule also applies to fixed-term employment agreements for the replacement of an absent employee if the agreement of the replaced employee is terminated during the replacement period.

**29. If agreement is required to vary an employment term, what are the company's options if employees refuse to agree to the proposed change?**

The law enables the employer to vary an employment term in a limited number of cases (assignment to a different position for production necessity for up to 45 calendar days per annum, or during idle periods; temporary part-time work in case of decrease of workload).

If the employee does not agree to the proposed change (where consent is required), the employer may not vary a contractually agreed employment term unilaterally. The employer may restructure the workforce under the general requirements (and in line with all accompanying restrictions).

**30. What are the potential legal consequences if an employer varies an employment term unilaterally?**

Such amendments are invalid and employees may challenge these before courts. Employers are also at risk of sanctions by the General Labour Inspectorate, of amounts up to 10,000 lev.

**Areas to Watch**

Please provide an outline of any upcoming legislative developments or other issues of particular concern or importance that are not already covered in your answers to the questionnaire. Please limit responses to the jurisdictional level rather than descriptions of wider global trends. Please limit your response to around 200 words.

No legislative changes impacting the above answers are in the pipeline.

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Iliyan Kostov is a Senior Associate at DGKV and a member of the firm's General Corporate, Employment & Mobility, and Taxation practices. In his practice as attorney at law, Iliyan consults a number of Bulgarian and international clients in various matters related to employment, immigration and mobility, as well as corporate affairs. Along with providing advice in these fields, Iliyan also works on complex M&A transactions, including participation in comprehensive due-diligence investigations.

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Youliana Naoumova is a corporate partner heading DGKV's Employment and Mobility practice group. She has abundant experience advising both Bulgarian and international clients on a wide spectrum of employment and social security matters. Her role frequently involves providing advice on sensitive employment issues related to the contracting of senior management and the structuring and implementing of individual and collective dismissals, employee transfer schemes, and leasing-of-personnel arrangements, as well as employment litigation. Youliana's work on complex M&A transactions also includes managing comprehensive due-diligence investigations of employment relations and related issues. She regularly advises clients on the labour aspects of post-acquisition organizational restructurings. Youliana acts as principal employment counsel to companies in various industries, including manufacturing, technology, media, trade, and services. She also advises multinational clients on immigration and mobility aspects, and a significant part of her practice involves the optimization of employee-representation systems on a pan-European and domestic level.

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